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By Mustard Dequent

H.B. No.

448

A BILL TO BE ENTITLED

AN ACT

to establish the Texas Water Quality Board, prescribe its powers, duties, functions, and procedures and to provide for the establishment and control of the quality of the waters in the state and the control, prevention, and abatement of pollution; validating previous actions of the Texas Water Pollution Control Board; providing penalties; repealing Chapter 42, Acts of the 57th Legislature, 1st Called Session, 1961, as amended (Article 7621d, Vernon's Texas Civil Statutes), and repealing certain other laws to the extent of conflict; providing for severability; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. STATEMENT OF POLICY. It is declared to be the policy of the State of Texas to maintain the quality of the waters in this state consistent with the public health and public enjoyment thereof, the propagation and protection of fish and wildlife, including birds, mammals and other terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to that end to require the use of all reasonable methods to implement this policy.

Sec. 2. NAME OF ACT. This Act shall be known as the "Texas Water Quality Act of 1967."

Sec. 3. DEFINITIONS OF TERMS. When used in this Act, the following words and phrases shall have the meanings ascribed to them in this section, unless the context clearly shows a different meaning:

(a) "Person" means any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other entity whatsoever.

(b) "Waters" or "waters in the state" means ground waters, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico within the territorial limits of the State of Texas, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, that are wholly or partially within or bordering the state or within its jurisdiction.

(c) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste and other waste, or any of them, as hereinbelow defined.

(d) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places, together with such ground water infiltration and surface waters with which it may be commingled.

(e) "Municipal waste" means any water-borne liquid, gaseous, solid, or other waste substance, or a combination thereof, resulting from any and all discharges within or emanating from within, or subject to the control of, any municipality, city, town, village, or any type of

1 (f) "Recreational waste" means any water-borne liquid, gaseous ,
2 solid, or other waste substance, or a combination thereof, arising within
3 or emanating from within any public park, beach, or recreational area of
4 any kind, public or private.

5 (g) "Agricultural waste" means any water-borne liquid, gaseous,
6 solid, or other waste substance arising from any type of agricultural
7 pursuit, public or private, including but not limited to, poisons and
8 insecticides used in such pursuits.

9 (h) "Industrial waste" means any water-borne liquid, gaseous, solid,
10 or other waste substance, or a combination thereof, resulting from any
11 process of industry, manufacturing, trade, or business.

12 (i) "Other waste" means garbage, refuse, decayed wood, sawdust,
13 shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs,
14 acids, chemicals, salt water, and all other substances not sewage, indus-
15 trial waste, municipal waste, recreational waste or agricultural waste,
16 that may cause impairment of the quality of the waters in the state.

17 (j) "Pollution" means any discharge or deposit of waste into or
18 adjacent to the waters in the state, or any act or omission in connection
19 therewith that by itself, or in conjunction with any other act or omission
20 or acts or omissions, cause or continues to cause or will cause such waters
21 to be unclean, noxious, odorous, impure, contaminated, altered, or other-
22 wise affected to such an extent that they are rendered harmful, detrimen-
23 tal, or injurious to public health, safety, or welfare, or to terrestrial
24 or aquatic life, or the growth and propagation thereof, or the use of
25 such waters for domestic, commercial, industrial, agricultural,
26 recreational, or other lawful reasonable use.

27 Where water quality criteria have been established by the Board
28 created by this Act, "pollution" means any discharge or deposit of waste
29 into or adjacent to the waters in the state, or any act or omission in
30 connection therewith, that by itself, or in conjunction with any other
31 act or omission or acts or omissions, causes or continues to cause or
32 will cause such waters to be of a lesser quality than that established
33 by the board as the criteria for those waters; notwithstanding the fore-
34 going, nothing in this Subsection (j) is intended to limit the authority
35 of the Water Quality Board to issue or to require permits for the dis-
36 charge of waste into or adjacent to the waters in the state, or to
37 establish criteria for any of the waters in the state.

38 (k) "Board" means the Texas Water Quality Board created by this Act.

39 (l) "Sewer system" or "sewerage system" means pipelines or conduits,
40 canals, pumping stations, and force mains, and all other constructions,
41 devices, and appliances appurtenant thereto, used for conducting sewage,
42 industrial waste, municipal waste, recreational waste or agricultural
43 waste, or other wastes to a point of ultimate disposal.

44 (m) "Treatment facilities" means any plant, disposal field, lagoon,
45 pumping station, constructed drainage ditch or surface water intercepting
46 ditch, incinerator, area devoted to sanitary land fills, or other works
47 not specifically mentioned herein, installed for the purpose of treating,
48 neutralizing, stabilizing or disposing of sewage, industrial waste,
49 municipal waste, recreational waste, agricultural waste, or other wastes.

50 (n) "Disposal system" means a system for disposing of sewage,
51 industrial waste, municipal waste, recreational waste, agricultural waste,
52 or other wastes, and including sewer systems and treatment facilities.

53 (o) "Local government" means an incorporated city, a county, river
54 authority, or a water district or authority acting under Section 52,
55 Article III, or Section 59, Article XVI, of the Constitution of the State
56 of Texas.

1 Sec. 4. CREATION AND ORGANIZATION OF THE TEXAS WATER QUALITY BOARD.

2 (a) There is hereby created and established a Texas Water Quality
3 Board which shall be composed of seven members.. The board shall carry
4 out the functions and duties conferred upon it by this Act. Three
5 members of the board shall be appointed by the governor with the advice
6 and consent of the Senate of the State of Texas. It is provided, however,
7 that the members of the Texas Water Pollution Control Board appointed by
8 the governor under the provisions of Section 3(a) of Chapter 42, Acts of
9 the 57th Legislature, 1st Called Session, 1961, as amended (Article 762ld,
10 Vernon's Texas Civil Statutes), who are in office when this Act goes into
11 effect are hereby constituted appointed members of the Texas Water Quality
12 Board and shall serve for the balance of the respective terms for which
13 they were appointed by the governor under said Section 3(a). Thereafter
14 all appointments by the governor to this board to fill a vacancy at the
15 end of a term shall be for a full six-year term. In the event of a vacancy
16 among the members of this board appointed by the governor, then the
17 governor shall appoint a new member to finish out the unexpired term of
18 the position which became vacant. In addition to the three members
19 appointed by the governor, the board shall consist of the Executive
20 Director of the Texas Water Development Board, the State Commissioner of
21 Health, the Executive Director of the Parks and Wildlife Department,
22 and the Chairman of the Texas Railroad Commission, each of whom shall
23 perform the duties required of a member of the board by this Act, which
24 shall be additional duties required of him in his other official capacity.

25 (b) The members of the board created hereby shall receive no fixed
26 salary for duties performed as a member of the board, but each of the
27 three members appointed by the governor shall be allowed, for each and
28 every day he is in attendance at meetings or on authorized business of
29 the board, the sum of \$25, including time spent in traveling to and from
30 the place of meeting or other authorized business of the board, and all
31 members of the board shall be allowed travel and other necessary expenses
32 while in performance of official duty, to be evidenced by vouchers
33 approved by the executive director of the board.

34 (c) A member of the board who is appointed by the governor shall
35 serve until his successor has been appointed and has taken the oath of
36 office.

37 Sec. 5. QUALIFICATIONS OF MEMBERS. The members of the Texas Water
38 Quality Board who are appointed by the governor and confirmed by the
39 Senate shall qualify by taking the constitutional oath of office before
40 any officer authorized to administer an oath within this state, and the
41 official records of the board shall reflect the date of their certificate
42 of appointment issued by the secretary of state, the date upon which and
43 before whom their oath of office was taken, the date upon which their
44 appointive term became effective and the date their term expires.

45 Sec. 6. PERSONAL REPRESENTATIVES. The Executive Director of the
46 Texas Water Development Board, the Executive Director of the Texas Parks
47 and Wildlife Department, the State Commissioner of Health, and the
48 Chairman of the Railroad Commission of Texas may delegate to a personal
49 representative from his office the authority and duty to represent him
50 on the board, but by such delegation a member is not relieved of respon-
51 sibility for the acts and decisions of his representative. The designated
52 personal representative, while engaged in the discharge of official board
53 duties on behalf of and as authorized by such member, stands in the place
54 and stead of such member for purposes of attending board meetings and
55 performing other business of the board, and for purposes of participating
56 in and voting on matters arising at board meetings and hearings. The

1 and shall receive reimbursement for traveling and other necessary expenses
2 while engaged in the performance of official board business in the same
3 manner as the one he represents. A personal representative may serve as
4 either chairman or vice chairman of the board under the provisions of
5 this Act.

6 Sec. 7. SELECTION OF OFFICERS AND MEETINGS OF THE BOARD. The board
7 shall elect a chairman and a vice chairman from its members and the terms
8 of such officers of the board shall be for two years commencing on February
9 1st of each odd-numbered year hereafter. At the first meeting of the
10 board, the chairman and the vice chairman shall be elected to serve until
11 February 1, 1969. The chairman or, in his absence, the vice chairman
12 shall preside at all meetings of the board and perform the other duties
13 prescribed by this Act. The board shall meet at regular intervals at
14 times provided by a majority vote of the board. Special meetings may
15 be called by the chairman, on his own motion, at any time and must be
16 called by him upon the receipt of written request therefor signed by at
17 least two or more members of the board. A majority of the board shall
18 constitute a quorum to transact business.

19 Sec. 8. RULES, REGULATIONS AND SEAL. (a) The board shall adopt,
20 prescribe, promulgate and enforce rules and regulations reasonably required
21 to effectuate the provisions of this Act, including rules governing
22 procedure and practice before the board. In promulgating rules, the board
23 shall comply, as appropriate, with the requirements of Chapter 274, Acts
24 of the 57th Legislature, Regular Session, 1961, as amended (Article
25 6252-13, Vernon's Texas Civil Statutes).

26 (b) The Board shall adopt a seal.

27 Sec. 9. EXECUTIVE DIRECTOR. (a) The board shall employ an executive
28 director. The executive director shall keep full and accurate minutes of
29 all transactions and proceedings of the board and shall be custodian of
30 all of the files and records of the board. The executive director is the
31 chief administrative officer of the activities of the board.

32 (b) The executive director shall employ the staff required by the
33 board, including a deputy, which deputy is subject to approval of the
34 board, to assume his duties and functions in his absence. In addition
35 to its own staff the board may request and shall receive by interagency
36 contract the assistance of any state-supported educational institution,
37 experimental station, or other state agency.

38 Sec. 10. FISCAL RESOURCES. (a) The Legislature shall appropriate
39 such funds as are reasonably necessary to carry out the provisions of this
40 Act, and any agency of the state with the responsibilities under the laws
41 of Texas for water pollution or water quality control and for which
42 appropriations may be made in the biennial appropriation act passed by
43 the Legislature for such responsibilities is hereby authorized to transfer
44 to the board created herein such annual amounts as may be mutually agreed
45 on by such agency and by the board, subject only to the concurrence of
46 the governor. It is further provided that said board is authorized to
47 apply for, request, solicit, contract for, receive, and accept money from
48 any federal or state agency, political subdivision or other legal entity
49 as well as private grants and assistance from any source to carry out the
50 duties required by this Act. Such monies as may be transferred under
51 the provisions hereof, and such gifts and grants as may be received by
52 said board, shall be deposited in the state treasury in a special fund,
53 to be used by the board for any of the purposes set forth in this Act
54 including salaries, wages, professional and consulting fees, planning and
55 construction grants and loans, travel expense, equipment, and other
56 necessary expenses, as provided by legislative appropriation.
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1 (b) The board shall make biennial reports in writing to the governor
2 and to the Legislature, which reports shall include a statement of its
3 activities. All information, documents and data collected by the board
4 in the performance of its duties shall be the property of the State of
5 Texas.

6 (c) Subject to the limitations imposed in Section 21, upon applica-
7 tion of any person and upon payment of the fees, if any, prescribed
8 therefor in the rules and regulations of the board, the board shall
9 furnish copies, certified or otherwise, of its proceedings or other
10 official acts of record, or of any map, paper, or document filed with
11 the board. Certified copies under the hand of the chairman or the
12 executive director and the seal of the board shall be admissible in
13 evidence in any court or administrative proceeding in the same manner
14 and with like effect as the original would be.

15 Sec. 11. AUTHORITY, POWERS, AND DUTIES OF THE BOARD. (a) The
16 board shall administer this Act and shall have authority to establish
17 and control the quality of the waters in the state as herein provided.

18 (b) The board, by official board order, shall set water quality
19 criteria for the waters in the state and may change or amend such criteria
20 from time to time and notwithstanding any general or special law hereto-
21 fore enacted, is given hereby the sole and exclusive authority to set and
22 establish and to amend and change the water quality criteria for all
23 waters in the State of Texas. In arriving at such water quality criteria,
24 or amendments thereto, the board shall:

25 (1) Hold public hearings at which any person may appear and present
26 evidence, under oath, as is pertinent for consideration by the Board.
27 Notice of such hearings shall be given to the local governments contiguous
28 to, or which contain wholly or partially within their boundaries, or
29 through which flow the waters in question, where in the judgment of the
30 board the local government may be affected. Notice shall also be given
31 to the holders of rights to appropriate water from the waters in question,
32 as shown by the records of the Texas Water Rights Commission, and to the
33 holders of permits from the board to discharge wastes into or adjacent
34 to the waters in question, where in the judgment of the board the holder
35 of a water right or the holder of a waste discharge permit may be affected.

36 (2) Consult with the Texas Water Development Board and Texas Water
37 Rights Commission to insure that the criteria or amendments proposed to
38 be set by this board are not inconsistent with the general state water
39 plan objectives.

40 (c) The board shall publish the criteria set by it, together with
41 any amendments thereto, and copies thereof shall be made available to
42 the public on written request.

43 (d) Any water quality criteria heretofore adopted by the Texas
44 Water Pollution Control Board before the effective date of this Act
45 shall not be affected hereby but same shall remain in full force and
46 effect unless and until amended by further order of the board created
47 in this Act.

48 (e) The board, after notice to the parties who in the judgment of
49 the board may be affected, and after a public hearing if the board deems
50 a public hearing to be in the public interest, may issue permits for the
51 discharge of waste into or adjacent to the waters in the state.

52 (f) Each permit shall set forth the conditions upon which it is
53 issued by the board, including, but without limiting such conditions to,
54 the duration of such permit, the maximum quantity of waste which may be
55 discharged thereunder at any time and from time to time, and the quality,
56 purity, and character of waste which may be discharged thereunder. The

1 permittee and after public hearing initiated by the board, to conform to
2 new or additional conditions and terms imposed by the board following
3 such hearing. The board shall allow the permittee a reasonable time to
4 conform to such new or additional terms and conditions; provided, however,
5 that upon application of the permittee, the board, in its discretion, may
6 grant the permittee an additional period of time within which to conform
7 to such new or additional terms and conditions. Such permit or amended
8 permit shall never become a vested right in the permittee, and it may
9 be revoked or suspended for good cause shown, after notice to the
10 permittee and after public hearing initiated by the Board, in the event
11 of the permittee's failure to comply with the terms and conditions of
12 such permit as issued or as amended. Notices to the permittee shall be
13 sent to his last known address, as shown by the records of the board.

14 (g) (1) The board, by order, may provide limits on the number and
15 kind of septic tanks in any area defined in said order, may provide no
16 septic tanks may be used or employed in such area, or may provide that
17 no new septic tanks may be installed in the area if it finds that because
18 of the nature of the soil or drainage in the area the order is necessary
19 to prevent pollution that may directly or indirectly injure the public
20 health. The board shall consult with the Commissioner of Health of the
21 State Department of Health prior to the entry of any such order. The
22 board may enter an order under this subsection only after a public
23 hearing held in the area to be affected by the order.

24 (2) The board may provide in the order for a gradual and systematic
25 reduction of the number or kind of septic tanks in the
26 area and may by the promulgation of rules and regulations provide for a
27 system of licensing and issuing of permits for new installations of
28 septic tanks in the area affected, in which event no person shall install
29 septic tanks in such area without a license or permit from the board.
30 Any person who knowingly violates any such order of the board shall be
31 subject to the civil penalties provided in Section 15 of this Act.

32 (h) The board is hereby authorized to:

33 (1) hold hearings, receive pertinent and relevant proof from any
34 party in interest who appears before the board, compel the attendance
35 of witnesses, make findings of fact and determinations with respect to
36 administering the provisions of this Act or of any orders, rules, or
37 regulations of the board;

38 (2) delegate to one or more of its members, or his personal repre-
39 sentative, or to one or more of its employees, the authority to take
40 testimony in any hearing called by the board, or authorized by the Board
41 to be held, with power to administer oaths, but all orders entered shall
42 be made by and in the name of the board after its official action and
43 attested to by the executive director;

44 (3) make, alter, or modify any orders, rules and regulations,
45 and if any such order requires the discontinuance of the discharge of
46 waste into any waters in the state, the order shall specify the conditions
47 and time within which such discontinuance must be accomplished;

48 (4) institute, or cause to be instituted, in courts of competent
49 jurisdiction, legal proceedings to compel compliance with the provisions
50 of this Act and the rules, regulations, decisions, determinations, and
51 orders of the board;

52 (5) conduct such investigations as it may deem advisable and
53 necessary for the discharge of its duties under this Act; and

54 (6) perform such other and further functions as may be necessary
55 to carry out effectively the duties and responsibilities of the board
56 prescribed in this Act.

57 (i) It shall be the duty of the board to:

1 state;

2 (2) encourage the formation and organization of cooperative groups,
3 associations, municipalities, or industrial and other users of the waters
4 in the state for the purpose of providing a medium to discuss and formu-
5 late plans for the attainment of water quality control;

6 (3) establish policies and procedures for the purpose of securing
7 close cooperation in the work of the agencies of the state with respect
8 to water quality control functions carried on by such agencies;

9 (4) cooperate with governments of the United States and other
10 states, and any other agencies or groups of agencies and organizations,
11 official or unofficial, with respect to water quality control matters or
12 for the formulation of interstate water quality control compacts or
13 agreements; where representation of State interests on a basin planning
14 agency is required in complying with Section 3(c)(1) of the Federal
15 Water Pollution Control Act (33 USC 466 et seq.), such state representa-
16 tion shall include an officer or employee of the board;

17 (5) conduct or cause to be conducted studies and research with
18 respect to water quality criteria or control problems, disposal systems,
19 and treatment of sewage, industrial waste, municipal waste, recreational
20 waste, agricultural waste, and other wastes; and

21 (6) prepare and develop a general comprehensive plan for the control
22 of water quality in the state.

23 (j) The board and its duly authorized agents or employees shall
24 have the right to enter at all reasonable times in or upon any property,
25 public or private, for the purpose of inspecting and investigating
26 conditions relating to water quality in the state. Agents and employees
27 shall not enter private property having management in residence without
28 notifying the management, or the person in charge at the time, of their
29 presence and exhibiting proper credentials. Such agents or employees
30 shall observe rules and regulations of the establishment being inspected
31 concerning safety, internal security, and fire protection.

32 (k) The board, and any employee or agent thereof, when authorized
33 by it, may examine any records or memoranda pertaining to the operation
34 of a disposal system, treatment facilities, or discharges of wastes at
35 reasonable business hours.

36 (l) In issuing, amending, modifying, revoking, or suspending any
37 permit to discharge waste into or adjacent to the waters in this state,
38 or in imposing any new or additional conditions upon any permittee
39 hereunder, the board shall not impose upon the applicant for a permit
40 or the permittee any condition which would require a higher standard of
41 operation than that which is consistent with the best practice in the
42 particular field affected under the conditions applicable to such applicant
43 or permittee. This shall not be construed to prohibit the board from
44 taking any means provided by this Act to prevent the discharge of waste
45 which is injurious to public health.

46 (m) The board, after consultation with the State Department of
47 Health, shall provide in its rules for a system of approved ratings for
48 city-operated waste disposal systems. If the board provides such a
49 system in its rules, a city that operates a waste disposal system which
50 attains an approved rating has the privilege of erecting signs of a
51 design approved by the board on highways approaching that city. If the
52 city's waste disposal system fails to continue to achieve an approved
53 rating, the board may revoke the privilege. On due notice from the
54 board, the city shall remove the signs.

55 (n) In fulfillment of its powers and duties under this Act, the
56 board may: (1) Enter into agreements with the Department of Interior

1 studies, programming, and construction related to methods, procedures and
2 facilities for the collection, treatment and disposal of wastes or other
3 water quality control activities as may be necessary to qualify for
4 federal funds, assistance or cooperation under the provisions of the
5 Federal Water Pollution Control Act or any other federal act now in
6 effect or hereafter enacted or amended.

7 (2) Accept funds from the federal government for purposes coming
8 within the scope of the preceding subsection (1) or any other provision
9 of this Act and expend such sums as may be received from the federal
10 government for such purposes in the manner prescribed by law and in
11 accordance with such agreements as may be necessary and appropriate
12 between the federal government and the board.

13 (3) Administer and expend state funds provided to the board by
14 legislative appropriations, as distinguished from funds received from
15 the federal government, for purposes coming within the scope of
16 subsection (1), above, or any other provision of this Act in the manner
17 prescribed by law and within the limits of funds appropriated for such
18 purposes, including without limiting the foregoing:

19 (i) the making of grants to any municipality or interstate agency,
20 as such terms are defined in the Federal Water Pollution Control Act
21 (33 USC 466, et seq.), or to any local government for the construction
22 of necessary treatment works, as defined in said Act, and necessary
23 sewer and sewerage systems, treatment facilities and disposal systems.

24 (ii) the making of grants or interest free loans to any planning
25 agency acting in furtherance of Section 3 (c) (1) of the Federal Water
26 Pollution Control Act (33 USC 466, et seq.), or to any local government
27 to pay administrative and other expenses for a period of not to exceed
28 three years for developing an effective, comprehensive water quality
29 control and abatement plan for a basin, as such term is defined in
30 Section 3 (c) (1) of said Act; provided that any loans made under this
31 paragraph shall be repaid to the board at such time as construction
32 of the project for which the planning loan was made is begun.

33 (o) State grants under Section (n) for construction shall be
34 subject to the following limitations:

35 (1) no grant of State funds shall be made in any instance unless
36 the grantee agrees to pay not less than 20 per centum of the estimated
37 reasonable cost (as determined by the board) of the project;

38 (2) no grant shall be made for any project unless the project has
39 been approved by the board and unless the project is included in the
40 state water quality program;

41 (3) no grant shall be made unless the grantee agrees to pay the
42 remaining cost;

43 (4) no grant shall be made until the applicant has made provision
44 satisfactory to the board for assuring proper and efficient operation
45 and maintenance of the project after completion of the construction
46 thereof;

47 (5) no grant shall be made unless the project is in conformity
48 with the state water quality program and unless the board has determined
49 that such project is entitled to priority over other eligible projects
50 on the basis of financial as well as water quality needs.

51 In determining the desirability of construction projects under
52 Section (n) and of approving state financial aid therefor, consideration
53 shall be given by the board to the public benefits to be derived by the
54 construction and the propriety of state aid in such construction, the
55 benefits from the protection and conservation of the waters and other
56 natural resources in the state, the relation of the ultimate cost of con-
57 structing and maintaining the project to the public benefits to be derived therefrom.

1 after completion of the construction thereof. Funds paid for construction
2 shall be used exclusively to meet the cost of construction of the
3 project for which the amount was paid. As used in section (n),
4 "construction" includes preliminary planning to determine the economic
5 and engineering feasibility of the project, the engineering, architectural,
6 legal, fiscal, and economic investigations and studies, surveys, designs,
7 plans, working drawings, specifications, procedures, and other action
8 necessary to the construction of the project; and erection, building,
9 acquisition, alteration, remodeling, improvement, or extension; and the
10 inspection and supervision of construction.

11 The board shall adopt rules, regulations and procedures to implement
12 and administer the programs authorized in section (n) which will assure
13 such engineering review and supervision, fiscal-control and fund-accounting
14 procedures as may be necessary to assure proper disbursement of and
15 accounting for funds paid by the board or for which the board may be
16 responsible. To the extent that the provisions of federal law are
17 deemed applicable by the board, such rules, regulations and procedures
18 shall be compatible therewith. The fiscal-control and fund-accounting
19 procedures shall be supplemental to such other procedures as may be
20 prescribed by state law and procedures.

1 Sec. 12. COURT REVIEW OF BOARD DECISION. Any person affected by
2 any ruling, order, decision, or other act of the board, may, within 30
3 days after the date on which such act is performed, or in case of a
4 ruling, order, or decision, within 30 days after the effective date
5 thereof, file a petition in an action to review, set aside, or suspend
6 such ruling, order, decision, or other act upon the ground or grounds
7 that the same is invalid, arbitrary, or unreasonable, except that any
8 appeal from an order of the board cancelling or suspending a permit
9 granted under the authority of this Act or under the rules and regula-
10 tions promulgated hereunder shall be by trial de novo and the question
11 at issue subject to determination under the preponderance of evidence
12 rule and not under the substantial evidence rule. Service of citation
13 on the board must be accomplished within 30 days after the filing of
14 the petition. The venue in any or all such action is hereby fixed
15 exclusively in the District Courts of Travis County, Texas.

16 Sec. 13. FILING OF DISPOSAL SYSTEM PLANS. For the purpose of
17 aiding the board in effectuating the provisions of this Act, every
18 person constructing or proposing to construct or materially alter the
19 efficiency of any sewer system or sewerage system, treatment facilities,
20 or disposal system, shall file with the board, at least 30 days prior to
21 beginning of construction, the preliminary plans and specifications for
22 the construction or material alteration of the same.

23 Sec. 14. GENERAL PROHIBITION AGAINST POLLUTION. It shall hereafter
24 be unlawful for any person to throw, drain, run, or otherwise discharge
25 into the waters in this state, or to cause, permit, or suffer to be
26 thrown, run, drained, allowed to seep, or otherwise enter such waters,
27 any waste, unless pursuant to and in accordance with a then existing
28 permit, that shall cause a condition of pollution as defined in the first
29 paragraph of Subsection (j) of Section 3 of this Act. This section shall
30 also apply to any activity by any person which may cause pollution of
31 the waters in the state which does not involve discharges of waste,
32 provided that if the Parks and Wildlife Department or the Railroad
33 Commission of Texas has jurisdiction of such activity, then this section
34 shall not apply.

35 Sec. 15. ENFORCEMENT. (a) Any person violating any of the pro-
36 visions of Section 14 of this Act shall be subject to a civil penalty of
37 not less than \$100 nor more than \$1,000 for each and every day of such
38 violation and for each and every act of such violation. The penalty
39 shall be recovered in the District Courts of Travis County, the district
40 court of the county of residence of the defendant, or in the district
41 court of the county in which the violation is alleged to have occurred.
42 Any person aiding or abetting any other person in the violation of
43 Section 14 of this Act shall be subject to the same penalties as a person
44 who violates the provisions of Section 14 of this Act. An action for any
45 such violation may be brought in the following manner:

46 (1) At the direction of the board, the attorney general shall
47 institute and conduct a suit in the name of the State of Texas under this
48 subsection.

49 (2) Upon formal resolution of its governing body, a local government
50 may institute and conduct a suit under this subsection. However, the
51 board created by this Act is authorized to be and is a necessary and
52 indispensable party to any suit brought by a local government under this
53 subsection.

54 (3) At the direction of the Texas Parks and Wildlife Department
55 or the employees thereof duly authorized by such Department, the
56 appropriate County or District Attorney shall institute and conduct a

1 (b) Whenever it appears that any person is violating or threatening
2 to violate any provision of Section 14 of this Act, the board may bring
3 suit against such person in the district court of the county in which
4 the violation or threat of violation occurs, to restrain such person
5 from continuing such violation or from carrying out the threat of
6 violation. In any such suit, the court shall have jurisdiction to grant
7 to the board, without bond or other undertaking, such prohibitory and
8 mandatory injunctions as the facts may warrant, including temporary
9 restraining orders, temporary injunctions, or permanent injunctions.
10 It shall be the duty of the attorney general to represent the board
11 when requested to do so. The action shall have precedence over all
12 other causes on the docket of the trial or appellate court of a
13 different nature, and either the board or the defendant or defendants
14 may appeal as in civil cases.

15 (c) The Texas Water Development Board, the Texas Parks and Wildlife
16 Department, the State Department of Health, and the Railroad Commission
17 of Texas are charged with the following specific duties in addition to
18 any other duties imposed on such agencies elsewhere in this Act:

19 (1) It shall be the duty of the Texas Water Development Board to
20 investigate all water quality matters concerning the groundwater in the
21 state, and it shall report all findings as to water quality to the board
22 created herein together with its recommendations in regard thereto.

23 (2) It shall be the duty of the Texas Parks and Wildlife Department
24 and the employees thereof duly authorized by such Department to enforce
25 the provisions of this Act insofar as any violation hereof occurs which
26 affects aquatic life, birds and animals.

27 (3) The Texas State Department of Health shall, when requested,
28 continue to perform the research, training, planning and other functions
29 presently being conducted by it in matters concerning pollution in
30 cooperation with, or as a state agency contributing its services to, the
31 board. It is the intent of the Legislature that full use be made of
32 the Texas Sanitation and Health Protection Law, Chapter 178, Acts of the
33 49th Legislature, 1945, as amended (Article 4477-1, Vernon's Texas Civil
34 Statutes), in the abatement of such nuisances as are set forth therein
35 where not inconsistent with this Act.

36 (4) The Railroad Commission of Texas shall be solely responsible
37 for the control and disposition of waste and the abatement and prevention
38 of pollution of water, both surface and subsurface, resulting from
39 activities associated with the exploration, development, or production of
40 oil or gas. The commission may issue permits for the discharge of waste
41 resulting from such activities, and discharge of waste hereunder into the
42 waters in the state shall meet the water quality criteria established
43 by the Texas Water Quality Board.

44 (5) Notwithstanding any provision of this Act, the Railroad
45 Commission of Texas and the Texas Water Development Board shall respective-
46 ly continue to exercise the authority granted to them in Chapter 82, Acts
47 of the 57th Legislature, Regular Session, 1961, as amended (Article
48 7621b, Vernon's Texas Civil Statutes); and the Railroad Commission of
49 Texas shall continue to and be solely responsible for the exercise of
50 the authority granted it in Article 6029a, Revised Civil Statutes of
51 Texas, 1925.

52 Sec. 16. AUTHORITY OF LOCAL GOVERNMENTS. (a) All local governments
53 shall be authorized to inspect the public waters in their areas and to
54 determine whether or not (1) the quality of the water meets the state
55 water quality criteria adopted by the board, (2) persons or local
56 governments discharging effluent into the public waters located in the
57 areas of which the local government has jurisdiction have obtained a

1 government may make written recommendations to the board as to what in
2 the judgment of such local government the water quality criteria should
3 be for any public waters within the designated limits of the local
4 government, exclusive of any extraterritorial limits.

5 (b) A local government shall have the same authority to go in and
6 on public and private property to make inspections as the board has
7 under the same provisions and restrictions as are applicable to the
8 agents and employees of the board. Any results of such inspections
9 shall be transmitted to the board for its consideration.

10 (c) A local government, upon formal resolution of its lawful
11 governing body, may sue in the appropriate district court to restrain
12 any person from violating or threatening to violate the provisions of
13 Section 14 of this Act, if the violation of such section causes or
14 would cause a condition of pollution in any of the waters in its
15 boundaries.

16 (d) The appropriate district court mentioned in the preceding
17 Subsection (c) shall be the district court of the county in which the
18 violation or threatened violation occurs.

19 (e) In any such action brought by a local government the district
20 court shall have jurisdiction to grant to the local government such
21 relief as in the judgment of the court the facts adduced at the trial
22 may warrant, including but not limited to temporary restraining orders,
23 temporary injunctions, and permanent injunctions.

24 (f) The local government and the defendant in any such action may
25 appeal the order of a district court as in other civil cases.

26 (g) The board created by this Act is authorized to be and must be
27 a necessary and indispensable party to any suit brought by a local
28 government under this section.

29 Sec. 17. COOPERATIVE AGREEMENT. A local government may enter into
30 cooperative agreements with other local governments for the following
31 purposes:

32 (a) to perform water quality management inspection and enforcement
33 and give and provide technical aid and educational services for any
34 local government that is a party to the agreement; and

35 (b) transfer money or property from one local government to another
36 which may be a party to such cooperative agreement for the purpose of
37 water quality management, inspection, enforcement, technical aid and
38 education as well as construction, ownership, purchase, maintenance and
39 operation of disposal systems.

40 Sec. 18. EXCEPTIONS. Any pollution which is caused by an act of
41 God, war, strike, riot, or other catastrophe shall not be held to be
42 a violation of this Act.

43 Sec. 19. NOTICES. (a) Form of notice. Notice of any hearing or
44 of any other proceeding for which notice is required by this Act shall
45 describe briefly and in summary form the purpose of the proceeding and the
46 time, place, and date thereof.

47 (b) Publication of Hearing Notice. Notice of a hearing shall be
48 published at least twice in a newspaper regularly published or circulated
49 in the county or counties containing such persons as the board has reason
50 to believe may be affected by action of the board taken by it as a result
51 of the hearing, the first date of publication to be not less than 20 days
52 before the date fixed for such hearing.

53 (c) Individual Service of Notice. Where notice of any proceeding
54 is required by this Act to be given to a person, the notice shall be
55 served personally or mailed to the person not less than 20 days before
56 the date fixed for such proceeding. If the entity to whom notice is to

1 Sec. 20. PRIVATE RIGHTS TO ABATE POLLUTION UNAFFECTED. This Act
2 shall not in any way affect the right of any private corporation or
3 individual to pursue all common-law remedies available to abate a
4 condition of pollution or other nuisances or recover damages therefor,
5 or both.

6 Sec. 21. PROTECTION OF CONFIDENTIAL INFORMATION. Nothing herein
7 contained shall require any person to disclose any classified data to
8 the federal government or any confidential information relating to
9 secret processes or economics of operation.

10 Sec. 22. VALIDATION OF PERMITS, ORDERS, RULES AND REGULATIONS.
11 All permits, orders, rules, regulations, water quality criteria and
12 other actions taken, performed and established by the Texas Water
13 Pollution Control Board under the authority of Chapter 42, Acts of the
14 57th Legislature, First Called Session, 1961, as amended, (Article 762ld,
15 Vernon's Texas Civil Statutes) are hereby validated. All such actions
16 shall be administered by and shall be under the jurisdiction of the
17 board created by this Act, the same as if originally performed by this
18 board, and they shall remain in full force and effect unless and until
19 changed and amended by order of this board. All statutes, rules and
20 regulations wherein reference is made to the Texas Water Pollution Control
21 Board or the State Water Pollution Control Board shall hereafter be
22 construed to mean the Texas Water Quality Board.

23 Sec. 23. REPEALER. Chapter 42, Acts of the 57th Legislature, 1st
24 Called Session, 1961, as amended (Article 762ld, Vernon's Texas Civil
25 Statutes), is repealed. To the extent that a general, local, or special
26 law may be construed to give local governments as defined in this Act
27 the authority to set and enforce water quality criteria other than those
28 adopted by the Texas Water Quality Board, that law is repealed.

29 Sec. 24. SEVERANCE CLAUSE. If any section, sentence, clause
30 or phrase of this Act is for any reason held to be unconstitutional,
31 such invalid portion shall not affect the validity of the remaining
32 portions of this Act. The Legislature hereby declares that it would
33 have passed the valid portions of this Act irrespective of the fact that
34 any one or more portions be declared unconstitutional.

35 Sec. 25. EFFECTIVE DATE. The provisions of this Act shall become
36 effective as of September 1, 1967, and it is so enacted.

37 Sec. 26. EMERGENCY CLAUSE. The importance of this legislation and
38 the crowded condition of the calendars in both houses create an emergency
39 and an imperative public necessity that the Constitutional Rule requiring
40 bills to be read on three several days in each house be suspended, and
41 this Rule is hereby suspended.
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By: Mutsaers & H. B. No. _____Hengert

A BILL

TO BE ENTITLED

AN ACT to establish the Texas Water Quality Board, prescribe its powers, duties, functions, and procedures and to provide for the establishment and control of the quality of the waters in the state and the control, prevention, and abatement of pollution; validating previous actions of the Texas Water Pollution Control Board; providing penalties; repealing Chapter 42, Acts of the 57th Legislature, 1st Called Session, 1961, as amended (Article 7621d, Vernon's Texas Civil Statutes), and repealing certain other laws to the extent of conflict; providing for severability; and ~~declaring an emergency.~~

FILED FEB 9 1967

FEB 13 1967 READ 1ST TIME

AND REFERRED TO COMMITTEE ON

State Affairs